

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
JEFFREY O'NEAL THOMPSON)	CASE NO. 05-80926-MHM
)	
Debtor)	
)	
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JEFFREY O'NEAL THOMPSON)	
)	
Plaintiff)	ADVERSARY PROCEEDING
)	NO. 05-6516
)	
v.)	
)	
SFC OF GA, L.P.)	
)	
Defendant)	

ORDER ON MOTION TO ALTER OR AMEND

The complaint in this adversary proceeding was filed November 14, 2005. Summons was issued November 15, 2005. A certificate of service of the summons and complaint was filed November 16, 2005. No further pleadings were filed and an order was entered June 15, 2006, dismissing this adversary proceeding pursuant to BLR 7055-1 for want of prosecution. Plaintiff filed a motion to alter or amend that dismissal order.

BLR 7055-1 has been replaced by BLR 7041(a)(3) provides:

Dismissal Authorized. The Bankruptcy Court may, with or without notice to the parties, dismiss an adversary proceeding or contested matter for want of prosecution if:...

- (3) An adversary proceeding or contested matter has been pending in the Bankruptcy Court for more than six months without any substantial proceedings of record having been taken, as shown by the record docket or other manner....

Plaintiff's complaint had been pending since the filing of the certificate of service November 16, 2005, for almost seven months with no other pleadings filed.

Plaintiff's motion to alter or amend was accompanied by a two-paragraph brief.

Plaintiff's argument in support of vacating the dismissal order was one sentence and one citation:

To automatically dismiss the two adversary actions was plain error. *Compare Boazman v. Economics Laboratory, Inc.*, 537 F. 2d 210, 213 (5th Cir. 1976).

In *Boazman*, the district court had dismissed an employment discrimination lawsuit because the plaintiff-employee had failed to file a response to the defendant's motion to dismiss a portion of the complaint for lack of subject matter jurisdiction. The court had previously entered an order directing the plaintiff to file a response or face dismissal for lack of prosecution. The Fifth Circuit Court of Appeals reversed the dismissal, finding it to have been too harsh a sanction. The *Boazman* court concluded that the dismissal, although without prejudice, constituted a dismissal *with* prejudice because the plaintiff was barred from refile by the expiration of the applicable statute of limitations.

The facts in *Boazman*, however, may be distinguished from the facts in the instant proceeding. In *Boazman*, an answer had been filed, discovery undertaken and motions had been filed by the defendant. Issue had been joined and it was clear that the plaintiff had not simply abandoned the claim for relief.

In the instant proceeding, Plaintiff filed and served the complaint and then, for the six months following the date the answer was due, took no further action to prosecute the complaint. The local rules and the Federal Rules of Civil Procedure provide for dismissal for lack of prosecution. The court has the inherent power to manage its docket and is under no obligation to tolerate apparently dormant proceedings based upon the possibility that, notwithstanding six

months of inaction, plaintiff does not intend to abandon its claim. Nevertheless, Plaintiff will be allowed one more opportunity to effectively prosecute this case. Accordingly, it is hereby

ORDERED that, if Plaintiff files a substantive pleading in prosecution of his claim against Defendant within 20 days of the date of entry of this order, the order entered June 15, 2006, shall thereupon stand ***vacated.***

IT IS SO ORDERED, this the ____ day of September, 2006.

MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE